

**Senate Bill No. 391**

(By Senators Walters, Facemire, Kessler, Laird, Mullins, Nohe, Romano and Plymale)

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[Introduced February 3, 2015; referred to the Committee on Government Organization; and then  
to the Committee on the Judiciary.]

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A BILL to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended; and to  
amend said code by adding thereto a new section, designated §21A-6-18, all relating to  
domestic violence victims' eligibility for unemployment compensation benefits; removing  
disqualification for certain victims of domestic violence, sexual offenses or stalking; and  
requiring training of Workforce West Virginia employees in the nature and dynamics of  
domestic violence to aid employees who interact with claimants.

*Be it enacted by the Legislature of West Virginia:*

That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
and that said code be amended by adding thereto a new section, designated §21A-6-18, all to read  
as follows:

**ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

**§21A-6-3. Disqualification for benefits.**

Upon the determination of the facts by the commissioner, an individual is disqualified for  
benefits:

1           (1) For the week in which he or she left his or her most recent work voluntarily without good  
2 cause involving fault on the part of the employer and until the individual returns to covered  
3 employment and has been employed in covered employment at least thirty working days.

4           For the purpose of this subdivision, an individual has not left his or her most recent work  
5 voluntarily without good cause involving fault on the part of the employer, if the individual leaves  
6 his or her most recent work with an employer and if he or she in fact, within a fourteen-day calendar  
7 period, does return to employment with the last preceding employer with whom he or she was  
8 previously employed within the past year prior to his or her return to workday, and which last  
9 preceding employer, after having previously employed the individual for thirty working days or  
10 more, laid off the individual because of lack of work, which layoff occasioned the payment of  
11 benefits under this chapter or could have occasioned the payment of benefits under this chapter had  
12 the individual applied for benefits. It is the intent of this paragraph to cause no disqualification for  
13 benefits for an individual who complies with the foregoing set of requirements and conditions.  
14 Further, for the purpose of this subdivision, an individual has not left his or her most recent work  
15 voluntarily without good cause involving fault on the part of the employer, if the individual was  
16 compelled to leave his or her work: ~~for his or her own~~

17           (A) For health-related reasons and notifies the employer prior to leaving the job or within two  
18 business days after leaving the job or as soon as practicable and presents written certification from  
19 a licensed physician within thirty days of leaving the job that his or her work aggravated, worsened  
20 or will worsen the individual's health problem; or

21           (B) (I) Due to circumstances directly resulting from:

22           (I) Domestic violence, as defined in section two hundred two, article twenty-seven, chapter

1 forty-eight;

2 (II) A sexual offense in article eight-b, chapter sixty-one of this code; or

3 (III) Stalking as provided in section nine-a, article two, chapter sixty-one by a family or  
4 household member as defined in section two hundred four, article twenty-seven, chapter forty-eight;

5 and

6 (ii) The individual:

7 (I) Reasonably fears future domestic violence, a future sexual offense or stalking at or on  
8 route to or from the individual's place of employment;

9 (II) Wishes to relocate to another geographic area in order to avoid future domestic violence,  
10 sexual offense or stalking against the individual, the individual's family, or coworkers;

11 (III) Reasonably believes that leaving work is necessary for the future safety of the individual,  
12 the individual's family, or coworkers;

13 (IV) Is required to leave employment as a condition of receiving services or shelter from an  
14 agency which provides support services or shelter to victims of domestic violence and sexual assault;

15 or

16 (V) Reasonably believes for any reason related to domestic violence or a sexual offense that  
17 termination of employment is necessary for the future safety of the individual, the individual's  
18 family, or coworkers.

19 (iii) The benefits payable under this paragraph (B) shall be paid from the fund provided under  
20 the provisions of article eight of this chapter and are not chargeable to the employer.

21 (iv) In the event that an employer contests the claim, the claimant must provide  
22 documentation of other action initiated by the claimant for safety including, but not limited to, a

1 protective order application, a police report, a medical record or a safety plan from a licensed  
2 domestic violence or sexual assault center or a licensed counselor.

3 (2) For the week in which he or she was discharged from his or her most recent work for  
4 misconduct and the six weeks immediately following that week; or for the week in which he or she  
5 was discharged from his or her last thirty-day employing unit for misconduct and the six weeks  
6 immediately following that week. The disqualification carries a reduction in the maximum benefit  
7 amount equal to six times the individual's weekly benefit. However, if the claimant returns to work  
8 in covered employment for thirty days during his or her benefit year, whether or not the days are  
9 consecutive, the maximum benefit amount is increased by the amount of the decrease imposed under  
10 the disqualification; except that:

11 If he or she were discharged from his or her most recent work for one of the following  
12 reasons, or if he or she were discharged from his or her last thirty days employing unit for one of the  
13 following reasons: Gross misconduct consisting of willful destruction of his or her employer's  
14 property; assault upon the person of his or her employer or any employee of his or her employer; if  
15 the assault is committed at the individual's place of employment or in the course of employment;  
16 reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work  
17 under the influence of any controlled substance, as defined in chapter sixty-a of this code without  
18 a valid prescription, or being under the influence of any controlled substance, as defined in ~~said~~  
19 chapter sixty-a without a valid prescription, while at work; adulterating or otherwise manipulating  
20 a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee;  
21 refusal to submit to random testing for alcohol or illegal controlled substances for employees in  
22 safety sensitive positions as defined in section two, article one-d, chapter twenty-one of this code;

1 arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross  
2 misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least  
3 thirty days in covered employment: *Provided*, That for the purpose of this subdivision, the words  
4 "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where the  
5 individual has received prior written warning that termination of employment may result from the  
6 act or acts: *Provided, however, That "misconduct" does not include any discharge due to*  
7 *circumstances directly resulting from domestic violence, as defined in section two hundred two,*  
8 *article twenty-seven, chapter forty-eight; a sexual offense in article eight-b, chapter sixty-one of this*  
9 *code; or stalking as defined by section nine-a, article two, chapter sixty-one by a family or household*  
10 *member as defined in section two hundred four, article twenty-seven, chapter forty-eight.*

11 (3) For the week in which he or she failed without good cause to apply for available, suitable  
12 work, accept suitable work when offered, or return to his or her customary self-employment when  
13 directed to do so by the commissioner, and for the four weeks which immediately follow for such  
14 additional period as any offer of suitable work shall continue open for his or her acceptance. The  
15 disqualification carries a reduction in the maximum benefit amount equal to four times the  
16 individual's weekly benefit amount.

17 (4) For a week in which his or her total or partial unemployment is due to a stoppage of work  
18 which exists because of a labor dispute at the factory, establishment or other premises at which he  
19 or she was last employed, unless the commissioner is satisfied that he or she: ~~(1)~~ (A) Was not  
20 participating, financing or directly interested in the dispute; and ~~(2)~~ (B) did not belong to a grade or  
21 class of workers who were participating, financing or directly interested in the labor dispute which  
22 resulted in the stoppage of work. No disqualification under this subdivision is imposed if the

1 employees are required to accept wages, hours or conditions of employment substantially less  
2 favorable than those prevailing for similar work in the locality, or if employees are denied the right  
3 of collective bargaining under generally prevailing conditions, or if an employer shuts down his or  
4 her plant or operation or dismisses his or her employees in order to force wage reduction, changes  
5 in hours or working conditions. For the purpose of this subdivision if any stoppage of work  
6 continues longer than four weeks after the termination of the labor dispute which caused stoppage  
7 of work, there is a rebuttable presumption that part of the stoppage of work which exists after a  
8 period of four weeks after the termination of the labor dispute did not exist because of the labor  
9 dispute; and in that event the burden is upon the employer or other interested party to show  
10 otherwise.

11 (5) For a week with respect to which he or she is receiving or has received:

12 (a) (A) Wages in lieu of notice;

13 (b) (B) Compensation for temporary total disability under the workers' compensation law of  
14 any state or under a similar law of the United States; or

15 (c) (C) Unemployment compensation benefits under the laws of the United States or any  
16 other state.

17 (6) For the week in which an individual has voluntarily quit employment to marry or to  
18 perform any marital, parental or family duty, or to attend to his or her personal business or affairs  
19 and until the individual returns to covered employment and has been employed in covered  
20 employment at least thirty working days: *Provided*, That an individual who has voluntarily quit  
21 employment to accompany a spouse serving in active military service who has been reassigned from  
22 one military assignment to another is not disqualified for benefits pursuant to this subdivision:

1 *Provided, however,* That the account of the employer of an individual who leaves the employment  
2 to accompany a spouse reassigned from one military assignment to another may not be charged.

3 (7) Benefits may not be paid to any individual on the basis of any services, substantially all  
4 of which consist of participating in sports or athletic events or training or preparing to ~~so~~ participate,  
5 for any week which commences during the period between two successive sport seasons (or similar  
6 periods) if the individual performed the services in the first of the seasons (or similar periods) and  
7 there is a reasonable assurance that the individual will perform the services in the later of the seasons  
8 (or similar periods).

9 (8) ~~(a)~~ (A) Benefits may not be paid on the basis of services performed by an alien unless the  
10 alien is an individual who was lawfully admitted for permanent residence at the time the services  
11 were performed, was lawfully present for purposes of performing the services or was permanently  
12 residing in the United States under color of law at the time the services were performed (including  
13 an alien who is lawfully present in the United States as a result of the application of the provisions  
14 of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided,* That  
15 any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act  
16 as provided by Public Law 94-566 which specify other conditions or other effective date than stated  
17 in this subdivision for the denial of benefits based on services performed by aliens and which  
18 modifications are required to be implemented under state law as a condition for full tax credit against  
19 the tax imposed by the federal Unemployment Tax Act are applicable under the provisions of this  
20 section.

21 ~~(b)~~ (B) Any data or information required of individuals applying for benefits to determine  
22 whether benefits are not payable to them because of their alien status shall be uniformly required

1 from all applicants for benefits.

2       ~~(e)~~ (C) In the case of an individual whose application for benefits would otherwise be  
3 approved, no determination that benefits to the individual are not payable because of his or her alien  
4 status may be made except upon a preponderance of the evidence.

5       (9) For each week in which an individual is unemployed because, having voluntarily left  
6 employment to attend a school, college, university or other educational institution, he or she is  
7 attending that school, college, university or other educational institution, or is awaiting entrance  
8 thereto or is awaiting the starting of a new term or session thereof, and until the individual returns  
9 to covered employment.

10       (10) For each week in which he or she is unemployed because of his or her request, or that  
11 of his or her duly authorized agent, for a vacation period at a specified time that would leave the  
12 employer no other alternative but to suspend operations.

13       (11) In the case of an individual who accepts an early retirement incentive package, unless  
14 he or she: ~~(i)~~ (A) Establishes a well-grounded fear of imminent layoff supported by definitive  
15 objective facts involving fault on the part of the employer; and ~~(ii)~~ (B) establishes that he or she  
16 would suffer a substantial loss by not accepting the early retirement incentive package.

17       (12) For each week with respect to which he or she is receiving or has received benefits under  
18 Title II of the Social Security Act or similar payments under any Act of Congress, or remuneration  
19 in the form of an annuity, pension or other retirement pay from a base period employer or chargeable  
20 employer or from any trust or fund contributed to by a base period employer or chargeable employer  
21 or any combination of the above, the weekly benefit amount payable to the individual for that week  
22 shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments or



1 remuneration: *Provided*, That if the amount of benefits is not a multiple of \$1, it shall be computed  
2 to the next lowest multiple of \$1: *Provided, however*, That there is no disqualification if in the  
3 individual's base period there are no wages which were paid by the base period employer or  
4 chargeable employer paying the remuneration, or by a fund into which the employer has paid during  
5 the base period: *Provided further*, That notwithstanding any other provision of this subdivision to  
6 the contrary, the weekly benefit amount payable to the individual for that week may not be reduced  
7 by any retirement benefits he or she is receiving or has received under Title II of the Social Security  
8 Act or similar payments under any Act of Congress. A claimant may be required to certify as to  
9 whether or not he or she is receiving or has been receiving remuneration in the form of an annuity,  
10 pension or other retirement pay from a base period employer or chargeable employer or from a trust  
11 fund contributed to by a base period employer or chargeable employer.

12 (13) For each week in which and for fifty-two weeks thereafter, beginning with the date of  
13 the decision, if the commissioner finds the individual who within twenty-four calendar months  
14 immediately preceding the decision, has made a false statement or representation knowing it to be  
15 false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under  
16 this article: *Provided*, That disqualification under this subdivision does not preclude prosecution  
17 under section seven, article ten of this chapter.

18 **§21A-6-18. Administration of domestic violence claims.**

19 The Executive Director of Workforce West Virginia shall: (1) Promulgate procedural rules  
20 providing for the confidentiality of information, including without limitation, addresses and contact  
21 information obtained in evaluating claims for domestic violence, sexual offenses and stalking by  
22 family or household members; and

1           (2) Establish and implement a training curriculum addressing the nature and dynamics of  
2 domestic violence to aid employees who interact with claimants:

3           (A) In determining whether a claimant's separation stems from domestic violence, a sexual  
4 offense or stalking by family or household members; and

5           (B) In reliably screening, identifying and adjudicating those claims.

NOTE: The purpose of this bill is to prevent an individual from being disqualified from receiving unemployment compensation benefits when their separation from employment is due to domestic violence, sexual offenses or stalking by family or household members. The individual must seek and accept new suitable work in order to remain eligible for benefits. The bill provides that the employer is not chargeable for benefits paid when the separation from work is for those reasons.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§21A-6-18 is new; therefore, strike-throughs and underscoring have been omitted.